

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	CSR 6424-E
	)	CSR 6425-E
Charter Communications Entertainment II, LLC	)	CSR 6426-E
	)	CSR 6427-E
	)	CSR 6428-E
Petition for Determination of Effective	)	CSR 6429-E
Competition in Seventeen California Franchise	)	CSR 6430-E
Areas	)	CSR 6948-E
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 22, 2007**

**Released: January 24, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Charter Communications Entertainment II, LLC ("Charter") has filed several petitions with the Commission for determinations of effective competition in seven California franchise areas (the "Franchise Areas")<sup>1</sup> pursuant to Section 623(a) of the Communications Act<sup>2</sup> and the Commission's implementing rules.<sup>3</sup> Charter alleges that its cable systems serving these Franchise Areas are subject to effective competition and, therefore, are exempt from cable rate regulation. Specifically, Charter claims that the effective competition present in these Franchise Areas arises from the competing services provided by two unaffiliated direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar

<sup>1</sup>See (1) Charter Monterey Park Petition at 1 (CSR 6948-E) (requesting that the Commission find effective competition in Monterey Park, CA (CA0136)); (2) Charter Del Norte Petition at 1 (CSR 6430-E) (requesting that the Commission find effective competition in: Azusa, CA (CA0668, CA1010); Calabasas, CA (CA0248, CA0258), Del Norte County, CA (CA0114, CA0113; CA0116, CA0628); Dixon, CA (CA0623); Duarte, CA (CA1119); Hidden Hills, CA (CA1220;CA1406); Long Beach, CA (CA0161); Los Angeles, CA (CA1209; CA0728); Malibu, CA (CA0249); Montebellow, CA (CA0183); Norwalk, CA (CA0876); Signal Hill, CA (CA0162); Temple City, CA (CA0871); Walnut, CA (CA0899); Watsonville, CA (CA0044); West Covina, CA (CA1059); and, Whittier, CA (CA0189)); (3) Charter Calabasas, CA Petition at 1 (CSR-6429-E) (requesting that the Commission find effective competition in all the communities listed in the Charter Del Norte Petition) (4) Charter Azusa Petition (CSR 6428-E) at 1 (requesting that the Commission find effective competition in all communities listed in the Del Norte Petition) (5) Charter Long Beach/Signal Hill Petition at 1 (CSR 6427-E) (requesting that the Commission find effective competition in all the communities listed in the Charter Del Norte Petition) (6) Charter Whittier Petition (CSR No. 6426-E) at 1 (requesting that the Commission find effective competition in all communities listed in the Charter Del Norte Petition) (7) Charter Watsonville Petition at 1 (CSR 6425-E) (requesting that the Commission find effective competition in all communities mentioned in the Charter Del Norte Petition) (8) Charter Dixon Petition (CSR 6424-E) at 1 (requesting that the commission find effective competition in all communities mentioned in the Charter Del Norte Petition.) Certain communities are listed in multiple petitions because cable operators are required to file a processing fee for each physical system unit. See Public Notice, *Reminder As To Procedures for Filing Cable Television Effective Competition Petitions*, 20 FCC Rcd 7294 (M.B. April 1, 2005).

<sup>2</sup>47 U.S.C. § 543(a).

<sup>3</sup>47 C.F.R. § 76.905(b).

Satellite, L.L.C. As a result, Charter asserts that it is subject to effective competition in these franchise areas under the “competing provider” test set forth in Section 623(1)(1)(B) of the Communications Act. The Cities of Calabasas, Duarte, Long Beach, and West Covina have filed oppositions to Charter’s petitions to which Charter has filed replies.

## II. DISCUSSION

2. Pursuant to Section 623(1) of the Act and Section 76.905 of the Commission’s rules,<sup>4</sup> it is presumed that cable systems do not face effective competition absent a demonstration to the contrary.<sup>5</sup> Consequently, the cable operator bears the burden of rebutting the presumption that effective competition does not exist by producing evidence that shows effective competition is present within the relevant franchise areas.<sup>6</sup> Section 623(1) of the Act provides that a cable operator is subject to effective competition if any one of the four tests for effective competition set forth therein is met.<sup>7</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other Commission cable regulations.<sup>8</sup>

3. Section 623(1)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offer comparable programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.<sup>9</sup> Turning to the first prong of this test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>10</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June, 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar has become the third largest, MVPD provider.<sup>11</sup> Because the two DBS providers have a nationwide footprint and serve well over 20 percent of all MVPD subscribers nationwide, we believe these statistics support the presumption that Charter’s franchise areas are within their satellite footprint. Moreover, Charter has provided sufficient evidence of DBS advertising in local, regional, and national media that serves the franchise areas.<sup>12</sup> We conclude that the population of the Franchise Areas may be deemed reasonably aware of the availability of DBS services for the purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the DBS providers’ programming satisfies the Commission’s program comparability criterion because DirecTV and EchoStar offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>13</sup>

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<sup>4</sup>See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>5</sup>47 C.F.R. § 76.906.

<sup>6</sup>See 47 C.F.R. §§ 76.906 & 76.907.

<sup>7</sup>See 47 U.S.C. § 543(1)(1)(A)-(D).

<sup>8</sup>See 47 C.F.R. §76.905.

<sup>9</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>10</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>11</sup>See *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, 21 FCC 2503 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>12</sup>See Petitions at 4 and Exhibit 1.

<sup>13</sup>See 47 C.F.R. § 76.905(g); *see also* Petitions at 5 (providing that DirecTV and EchoStar offer “well over 100 video channels, most of which are nonbroadcast services”); *see also*, Petitions, Exhibit 2 (the Channel Line-ups of DirectTV and EchoStar).

4. The City of Calabasas, the City of Duarte, and the City of West Covina have filed oppositions to Charter's petitions.<sup>14</sup> These parties contend that it is impossible to determine if Charter's petition meets the first prong of the "competing provider" effective competition test because Charter refused their Request for Information ("RFI").<sup>15</sup> They claim that Charter's refusal to address the RFI makes it difficult to determine whether comparable programming is offered and whether any regulatory, technical, or other impediments exist within the Franchise Areas, especially since 19 percent of the Calabasas's households,<sup>16</sup> 29 percent of Duarte households,<sup>17</sup> and 33.5 percent of West Covina's households<sup>18</sup> are occupied by renters. According to these parties, renters may be denied competitive options due to bulk purchase contracts or physical limitations of satellite antenna placement.<sup>19</sup>

5. We reject the local franchising authorities' ("LFA") arguments for the following reasons. First, we note that there are no Commission procedures in place for LFAs to independently propound RFIs on cable operators claiming effective competition. Accordingly, Charter was under no obligation to respond to the RFIs. Moreover, there is substantial evidence on the record to satisfy the first prong of the competing provider test. With regard to programming comparability, Charter demonstrated that the programming of DirecTV and EchoStar more than satisfies the Commission's requirements.<sup>20</sup> Nor is the high percentage of renters of import to the instant determination. Rental dwellings constitute households for the purposes of an effective competition determination. In addition, renters are entitled to subscribe to, and install antennas to receive, DBS service in accordance with Section 1.4000 of the Commission's rules.<sup>21</sup> In sum, we find that Charter has demonstrated that the Franchise Areas are served by at least two unaffiliated MVPDs, DirecTV and EchoStar, each of which offer comparable video programming to at least 50 percent of the households in the franchise area.<sup>22</sup> Therefore, the first prong of the competing provider test is satisfied.

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<sup>14</sup> The City of Whittier also filed a conditional opposition to Charter's petition claiming that Charter used incorrect zip code data when calculating DBS penetration in the franchise area and when calculating the total number of households in the city. Specifically, Whittier contended that Charter included two zip codes (90601 and 90605) that are "partially outside the city limits" and excluded two zip codes (90604 and 90606) that are partially within the city limits. *See* Response of Conditional Opposition by City of Whittier at 2. Charter states in its Reply to the City of Whittier that even if the excluded two zip codes (90601 and 90605) are included in the DBS penetration calculation, DBS penetration still exceeds 15 percent in the City of Whittier. Per its revised allocation percentage, DBS penetration increases from 22.1 percent to 25.1 percent. *See* Reply to Response of Conditional Opposition to Petition for Special Relief at 2. In addition, the City of Watson filed a conditional opposition seeking an extension of time to further study the data submitted by Charter in its petition. *See* Response of Conditional Opposition by the City of Watson and 1-2. The city took no further action with respect to this opposition. Finally, the City of Los Angeles filed an opposition, emphasizing that although only a small section of Los Angeles is affected by Charter's petition, Los Angeles objects to any determination of effective competition "based solely on the presence of satellite video providers." *See* Opposition to Charter's Petition for Special Relief by the City of Los Angeles at 2.

<sup>15</sup> *See* Opposition of the City of Calabasas, California at 2; Opposition of the City of Duarte, California at 2; Opposition of the City of West Covina, California at 2.

<sup>16</sup> *See* Opposition of the City of Calabasas, California at 2.

<sup>17</sup> *See* Opposition of the City of Duarte, California at 2.

<sup>18</sup> *See* Opposition of the City of West Covina, California at 2.

<sup>19</sup> *See* Opposition of the City of Calabasas, California at 3; Opposition of the City of Duarte, California at 3; Opposition of the City of West Covina, California at 3.

<sup>20</sup> *See supra* n. 15 and accompanying text.

<sup>21</sup> 47 C.F.R. § 1.4000 (Commission's over-the-air reception device rules).

<sup>22</sup> *See* Petitions at 3-5.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Charter's assertion that it is the largest MVPD provider in these Franchise Areas was not disputed.<sup>23</sup>

7. Charter has provided a copy of the 2000 Census Report showing the number of households in the Franchise Areas.<sup>24</sup> Charter also purchased a Satellite Broadcasting and Communications Association ("SBCA") Effective Competition Tracking Report for the Franchise Areas reflecting the number of DBS subscribers within the zip codes associated with the cable communities.<sup>25</sup> Charter then uses an allocation figure to apply to the DBS subscriber count provided by SBCA to reflect the fact that "some of the reported DBS subscribers may be located in zip code areas outside the actual franchise boundary."<sup>26</sup> The data provided by Charter indicates that DBS penetration ranges from 17.4 percent in Montebello to 35.9 percent in Malibu.

8. The City of Long Beach has filed an opposition to Charter's petition claiming that Charter failed to accurately report the number of DBS subscribers in the Long Beach Area. Specifically, Long Beach argues that Charter used inaccurate figures derived from 5-digit U.S. Postal codes adjusted for certain zip codes that may not be in the City of Long Beach. Long Beach contends that Charter should have used figures derived from the zip code plus four ("zip + 4") data. In addition, Long Beach contends that Charter failed to deduct from the total number of DBS households those households that subscribe to both Charter's cable system and DBS. Long Beach requests that the figure for the total number of DBS subscribers be reduced by 15.49 percent, representing the nationwide percentage of the total number of households receiving both cable and DBS service.<sup>27</sup> Per this percentage deduction, Long Beach argues that the total penetration percentage of DBS subscribers in the area would be 14.28 percent, below the 15 percent threshold.<sup>28</sup> The City of Long Beach also contends that because the Census used is dated 2000, the actual number of households in the Long Beach area should be adjusted upward to include new housing units. Per this adjustment, Long Beach argues that the actual number of household in Long Beach would be 168,445 rather than 163,088 as reflected in the 2000 Census data.<sup>29</sup> Based on this number, the percentage of households subscribing to DBS is 13.83 percent, below the 15 percent threshold.<sup>30</sup>

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<sup>23</sup> *Id.* at 6.

<sup>24</sup> See Exhibit C attached to Charter's Petitions.

<sup>25</sup> See Exhibit D attached to Charter's Petitions.

<sup>26</sup> See Petitions at 6 and n. 17. To create this allocation figure, Charter compared the 2000 U.S. Census household figures for the franchise areas with the postal service household figures for the zip code area, determined using ZIPFind Deluxe 5.0 software.

<sup>27</sup> See LongBeach Opposition at 5.

<sup>28</sup> See *id.* at 6.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

9. In Reply, Charter asserts that Long Beach failed to show how the zip+4 data is more accurate than Charter's methodology. Charter also states that the Commission has approved allocation methodologies similar to the one used by Charter in prior cases.<sup>31</sup> Charter further emphasizes that Commission precedent has not in the past required the exclusion of dual DBS/cable subscribers from the competing provider calculation.<sup>32</sup> Furthermore, although Charter emphasizes that the city failed to provide the source for its "new housing units," this issue is irrelevant; the number of DBS subscribers as reported by Charter remains in excess of the 15 percent threshold even when based on the city's revised household figure.<sup>33</sup> We agree with Charter's contentions with regard to Long Beach's arguments.

10. We accept the data, including revised Exhibit A, provided by Charter as establishing a reasonable basis for finding that DBS penetration exceeds 15 percent in the Franchise Areas. These penetration rates provide a sufficient margin of error with respect to the 15 percent competing provider test threshold, overcoming any concerns raised by unsupported arguments about DBS penetration imbalances in the subject Franchise Areas. Moreover, the methodology used in calculating DBS penetration has been approved by the Commission in previous cases with similar fact patterns to the ones described by Charter here. The Commission supports, but does not at this time require, the submission of effective competition calculations using zip+4 information. We therefore find that Charter has provided evidence sufficient to meet the second prong of the competing provider effective competition test.

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the Petitions for Determinations of Effective Competition in the California Franchise Areas, as set forth in Attachment A, filed by Charter Communications Entertainment II, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities in the California Franchise Area overseeing Charter Communications Entertainment II., LLC **ARE REVOKED**.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>31</sup> See Reply to Long Beach Opposition at 2 (citing Charter Communications Inc. et al., Petition for Determination of Effective Competition in Eight Virginia Communities, 19 FCC Rcd. 6878, ¶¶ 8-11 (April 16, 2004); Texas Cable Partners, L.P., Petition for Determination of Effective Competition in Eleven Texas Communities, 19 FCC Rcd. 6213, ¶¶ 7-9 (Apr. 7, 2004); Amzak Cable Midwest, Inc. and Minnesota Cable Properties, Inc. Petition for Determination of Effective Competition in Eleven Minnesota Communities, 19 FCC Rcd. 6208, ¶¶ 6, 11-13 (Apr. 5, 2004).

<sup>32</sup> See *id.* at 3.

<sup>33</sup> See *id.* at 5.

**ATTACHMENT A**

**File Number CSR 6424-E**  
**File Number CSR 6425-E**  
**File Number CSR 6426-E**  
**File Number CSR 6427-E**  
**File Number CSR 6428-E**  
**File Number CSR 6429-E**  
**File Number CSR 6430-E**  
**File Number CSR 6948-E**

**FRANCHISE AREAS SERVED BY**  
**Charter COMMUNICATIONS on behalf of its Affiliates**

**Competing Provider Test**

<b>Franchise Area</b>	<b>2000 Census Household<sup>34</sup></b>	<b>DBS Subs Allocated</b>	<b>CPR: DBS Penetration Rate</b>
Azusa, City	12549	2517	20.06%
Calabasas, City	7229	2366	32.73%
Del Norte County	7328	1479	20.18%
Dixon, City	5073	1690	33.31%
Duarte, City	6635	1566	23.60%
Hidden Hills, City	568	186	32.75%
Long Beach, City	163088	27569	16.90%
Los Angeles, City	98	30	30.61%
Malibu, City	5137	1843	35.88%
Montebello, City	18844	3285	17.43%
Norwalk, City	26887	6973	25.93%
Signal Hill, City	3621	735	20.30%
Temple City, City	11338	1808	15.95%
Walnut, City	8260	1882	22.78%
Watsonville, City	11381	3339	29.34%
West Covina, City	31411	8006	25.49%
Whittier, City	28271	6250	22.11%

<sup>34</sup> Household Data Figures, available at <http://factfinder.census.gov>; see Petition at Exhibit E.